

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:10CR369</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>TENTATIVE FINDINGS</b>
	)	
<b>ALFRED TUCKER,</b>	)	
	)	
<b>Defendant.</b>	)	

The Court has received the Revised Presentence Investigation Report (“PSR”) and the Defendant’s objections thereto (Filing No. 63). The government adopted the PSR (Filing No. 60). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 543 U.S. 220 (2005), the sentencing guidelines are advisory.

The Defendant objects to several paragraphs in the PSR.

**¶ 20 - Base Offense Level**

Defendant objects to the application of base offense level found at U.S.S.G. § 2K2.1(a)(2). The objection will be heard at sentencing, and the government has the burden by a preponderance of the evidence.

**¶¶ 15, 24<sup>1</sup> - Obstruction of Justice**

Defendant objects to the 2-level enhancement for obstruction of justice in ¶ 24. The objection will be heard at sentencing, and the government has the burden by a preponderance of the evidence.

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<sup>1</sup>While the objections also refer to ¶ 26 (lack of an adjustment for acceptance of responsibility), it does not appear from the objections or supporting brief that Defendant objects to ¶ 26.

### **¶ 28 - Armed Career Criminal**

Defendant objects to his classification as an armed career criminal. The objection will be heard at sentencing, and the government has the burden by a preponderance of the evidence.

### **¶¶ 31-63 - Overstatement of Criminal History**

Defendant makes a blanket “objection” to the entirety of his criminal history, arguing his criminal history is overstated. This issue is not the subject of objections to a PSR, but rather a motion for downward departure based on U.S.S.G. § 4A1.3. A motion for downward departure has not been filed. The objection is denied.

IT IS ORDERED:

1. The Defendant’s objections to ¶¶ 31-63 are denied;
2. The Defendant’s objections to ¶¶ 20 (base offense level), 15 and 24 (obstruction of justice), and 28 (armed career criminal status) will be heard at sentencing;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 3 of this Order, my tentative findings may become final; and

5. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 3<sup>rd</sup> day of June 2011.

BY THE COURT:

S/ Laurie Smith Camp  
United States District Judge